

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-50-C - ORDER NO. 2004-185
AUGUST 23, 2004

IN RE: US LEC of South Carolina, Inc.,)	
)	ORDER DISMISSING
Complainant,)	COMPLAINT WITHOUT
)	PREJUDICE
vs.)	
)	
BellSouth Telecommunications, Inc.,)	
)	
Respondent.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) upon US LEC of South Carolina, Inc.’s. (“US LEC’s”) Motion to Dismiss, without prejudice, its Complaint against BellSouth Telecommunications, Inc. (“BellSouth”) (collectively, the “Parties”). For the reasons set forth below, the Commission finds that US LEC’s Motion should be granted.

On February 24, 2004, US LEC, pursuant to S.C. Code Ann. Reg. 103-835, filed with the Commission a Complaint against BellSouth alleging the failure of BellSouth to comply with 47 U.S.C. § 242(i) and sought the Commission’s intervention in this matter. Specifically, US LEC petitioned the Commission to issue an order compelling BellSouth to comply with its obligations under 47 U.S.C. §§ 251 and 252 and 47 C.F.R. Section 51.809(a), requiring BellSouth to execute the Adoption Agreement between US LEC and

BellSouth, and approving US LEC's § 252(i) adoption of the interconnection agreement between BellSouth and Time Warner of South Carolina, LLC dated January 23, 2003. According to US LEC, BellSouth's position in this matter is to not permit the adoption of any existing, approved interconnection agreement, until or unless, an amendment is adopted or negotiated incorporating the provisions of the Federal Communications Commission's ("FCC's") Triennial Review Order (the "TRO Amendment") into such agreement. US LEC states that it has not found an approved TRO Amendment that is satisfactory to adopt and that US LEC and BellSouth have not been able to reach an agreement for a TRO Amendment.

US LEC, on March 16, 2004, filed a Petition for Arbitration with the Commission seeking to resolve the Parties' differences in the proposed language of the TRO Amendment. Upon receipt of US LEC's Petition for Arbitration, the Commission established Docket No. 2004-78-C for the arbitration proceeding. Upon completion of the arbitration, according to US LEC, the necessary TRO Amendment should be in place and such TRO Amendment should eliminate any alleged impediments asserted by BellSouth to US LEC's adoption of the selected interconnection agreement US LEC seeks to adopt.

The Commission's Executive Director issued a thirty (30) day Notice by which BellSouth was to answer the allegations set forth in US LEC's Complaint. Prior to the end of the thirty (30) day timeframe of April 1, 2004, within which to respond, US LEC filed a Motion to Dismiss on March 26, 2004.

In support of its Motion, US LEC and BellSouth have conceded that both Parties' interests would best be served by the consolidation of the issue raised in the Complaint

with the issues raised in the arbitration proceeding; therefore, the issue of whether US LEC can adopt the selected interconnection agreement under Section 252(i) can and should be resolved in the arbitration proceeding. Should the Commission approve US LEC's Motion to Dismiss, US LEC asserts that both Parties' agree that BellSouth will place the Complaint issue in its response to US LEC's Petition for Arbitration in order that the Complaint issue may be considered and resolved along with the other arbitration issues.

In furtherance of support for its Motion, US LEC attaches to its Motion a letter to US LEC's counsel from BellSouth, dated March 26, 2004, wherein BellSouth acknowledges that agreement has been reached between the Parties for consolidation of the Complaint issue with the issues asserted in the arbitration proceeding. Additionally, BellSouth states that it will not oppose US LEC's Motion to Dismiss and that if the motion is granted; BellSouth will address the Complaint issue in its response to US LEC's Petition for Arbitration.

Since the Parties have agreed upon consolidation of the Complaint issue with the arbitration issues and due to judicial efficiency of resolving the related issues between the Parties in a single proceeding, US LEC requests the Commission dismiss its Complaint against BellSouth in the instant docket, without prejudice, and with the understanding that the issue raised in the Complaint will be presented as part of the arbitration proceeding.

Based upon the correspondence and pleadings before it, the Commission finds that US LEC's Motion to Dismiss its Complaint against BellSouth should be granted

without prejudice. We further find that the issue raised in US LEC's Complaint should be consolidated with the issues contained in the arbitration proceeding.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. US LEC of South Carolina, Inc.'s Motion to Dismiss is granted.
2. US LEC of South Carolina, Inc.'s Complaint against BellSouth Telecommunications, Inc. in this docket is hereby dismissed without prejudice.
3. The issue raised in US LEC of South Carolina, Inc.'s Complaint against BellSouth Telecommunications, Inc. will be addressed and consolidated with the issues raised in the arbitration proceeding in Docket No. 2004-78-C.
4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)